

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
	Application Number 10/791,948-Conf. #4130	Filed March 3, 2004
	First Named inventor Warren S. Taranow	
	Art Unit 3772	Examiner T. R. Patel
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor. _____ /John G. Posal <small>Signature</small></p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) _____ /John G. Posal <small>Typed or printed name</small></p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number _____ 37,424 _____ / (734) 913-9300 <small>Telephone number</small></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____ / September 2, 2008 <small>Date</small></p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<input type="checkbox"/> *Total of 1 forms are submitted.		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Taranow

Serial No.: 10/791,948

Group No.: 3772

Filed: March 3, 2004

Examiner: T. Patel

For: VACUUM-SECURED ORTHOTIC, PROSTHETIC, AND OTHER BODY WORN
DEVICES

PRE-APPEAL BRIEF ARGUMENTS

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

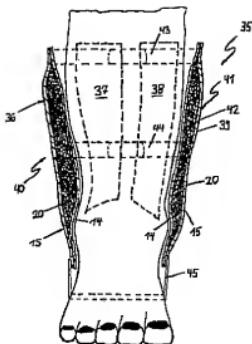
Dear Sir:

In response to the final Office Action mailed May 30, 2008, Applicant hereby submits a Notice of Appeal accompanied by a Pre-Appeal Request for Review. Pre-Appeal Brief arguments are set forth below for the consideration of the review panel. Applicant is submitting this pre-appeal brief on the belief that the Examiner has committed clear error in issuing the final rejection.

**HASSLER DOES NOT TEACH OR SUGGEST A FLEXIBLE, CONTINUOUS BAND
ADAPTED TO COMPLETELY ENCIRCLE A CALF PORTION OF A HUMAN LEG**

Claims 3, 5-7 and 21 stand rejected under 35 USC §103(a) over Hassler et al. ('400) in view of McDavid, III ('865). Independent claim 21 includes, among other limitations, a flexible, continuous band adapted to completely encircle a calf portion of a human leg. Hassler does not have this. The Examiner states on page 2 of the Final OA argues this is met by "fig. 4 [which] shows 36-39 encircling the human leg," but Applicant believes this is not the case.

Figure 4 of Hassler et al. has been reproduced below:



As can be seen from this Figure, 36-39 are vertical strips that do not encircle anything. According to the reference:

"FIG. 4 shows a body protection/support device in use as a splint device 35, having an, in the present case, multiple arrangement of support elements 36, 37, 38 and 39. The individual support elements 36 to 39 in the present case are of an identical type..." ('400 Patent; 5:32-36).

As the drawing shows, elements 36, 37, 38 and 39 are 'multiple' and 'of an identical type.' They are clearly not 'continuous.'

**HASSLER DOES NOT TEACH OR SUGGEST
A PORT FACILITATING EVACUATION OF THE SPACE
BETWEEN THE INNER SURFACE OF THE BAND
AND THE SKIN OF THE WEARER**

The Examiner argues that this limitation is met by referring to Hassler "as described in column 5, line 54 to column 6, line 3 and column 5, lines 17-30." (Final OA, middle of page 2). However, these sections do not describe Applicant's limitation. Column 5, line 54- column 6 line 3 reads as follows:

"Unlike the left support element 36, the—[sic] in FIG. 4 right support element 39 comprises an evacuable receiving enclosure 41 which, like the embodiment of the head protection device 10 shown in FIG. 3, is provided with a non-return valve device 31. The evacuable design of the support element 39 enables uniform compression of the molded bodies 20 disposed in an interior space 42 so that transfer of the support action of the dimensionally stable outer material layer 15 to the body part may be effected more directly and more effectively.

As was illustrated with the embodiment according to FIG. 4, it is possible for the splint device 35 to be composed of both non-evacuable support elements and evacuable support elements in order to produce the most advantageous configuration of the splint device 35 for each given application. Thus, in regions of the body part requiring less support than others, non-evacuable support elements may be used."

Column 5, lines 17-30 reads as follows:

"Situated at one point in the transition region 27 between an edge region 23 of the inner material layer 30 and the edge region 25 of the outer material layer 13 is a non-return valve device 31, which allows an evacuation of the interior space 18 of the receiving enclosure 11. Said evacuation may be effected automatically during positioning of the head protection device 29 on the head, whereby a yielding of the dimensionally compliant, in the present cast flexible material layer 30 in the direction of the outer material layer 15 forming the outer part 13 is effected. The non-return valve device 31 comprises a handle 32, which is connected to a valve body 33, and counter to the action of a valve spring 34 allows an aeration of the interior space 18 in cooperation with resilient restoring forces of the material layer 30."

As is evident from these sections, the evacuable portions of Hassler are *within* sealed elements and *not* between any portion of the article and the skin of a wearer. Indeed, atmospheric pressure is present on all sides of the Hassler device, including on the sides facing the skin. This pressure squeezes the molded bodies making a rigid structure of the bag, but it does not establish contact with the skin. In fact, the pressure tends to do the opposite.

The above drawing shows clearly that the absence of a seal to the skin allows pressure to the inner area near the skin, that actually pushes the bag away from the skin as it becomes rigid. It is clear that it does not create intimate or slip-free contact with the skin. Hassler uses a vacuum only to make a rigid shape that conforms to the shape of the body as a splint. He uses Velcro straps 43 and 44 to hold the bags in place, not vacuum between the skin and bag. Foot loops 45 do not provide a load-bearing function; they just hold the splint in position along with the Velcro straps.

With respect McDavid US 5,797,865, note that the stirrup member 34 in Figure 11 is hinged at the ankle. This freedom to flex allows only lateral support of the ankle, but does not take the weight off of the ankle. The pivoting connection will not allow full load to be taken by the stirrup. The patient would have to apply forces with the foot to maintain balance. The rigid member described by Applicant does not hinge and allows no load to the foot. There is no evidence whatsoever that it would be obvious to combine Hassler and McDavid "to better support user leg with device."

In summary, it is Applicant's position that the Examiner has failed to establish *prima facie* obviousness. Careful consideration prior to appeal is respectfully solicited.

Respectfully submitted,

By: _____
John G. Posa (Reg. No. 37,424)
Gifford, Krass, Sprinkle et al
PO Box 7021
Troy, MI 48007-7021
(734) 913-9300 FAX (734) 913-6007
Email: jposa@patlaw.com

Dated: September 2, 2008